

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIE LAWANDA SULLIVAN,

Defendant-Appellant.

UNPUBLISHED

June 18, 2009

No. 283593

Washtenaw Circuit Court

LC No. 07-000657-FH

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

Defendant Christie Lawanda Sullivan appeals by right her jury conviction of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a police officer (resisting and obstructing an officer), MCL 750.81d(1), and driving with a suspended license, MCL 257.904(1). On appeal, Sullivan argues that the trial court should have dismissed the charge of resisting and obstructing an officer because the officer did not have jurisdiction to enforce the traffic laws in the area at issue. Sullivan also argues that the trial court erred when it declined to give several instructions to the jury and that these errors deprived her of a fair trial. Finally, Sullivan argues that, because there was no evidence that she received the notice provided by MCL 257.212, the trial court should have directed a verdict in her favor on the charge of driving with a suspended license. We conclude that the trial court did not err when it declined to dismiss the resisting and obstructing an officer charge and that there were no instructional errors warranting relief. However, we agree that the prosecution failed to present evidence that Sullivan received notice of her suspension in the manner provided by MCL 257.212. For these reasons, we affirm in part and reverse in part.

I. Basic Facts

Sullivan's convictions arise out of an altercation after a traffic stop in April 2007. On the day at issue, Sullivan had left work and was waiting to turn left onto Eisenhower Place from Eisenhower Parkway. Around the same time, police officer Frank Rubino, who was an officer with the University of Michigan, had just completed a check of some property owned by the university and was proceeding to another property when he pulled up to the intersection where Sullivan was waiting to turn left. At the intersection, Rubino noticed that Sullivan's car had expired tags. After confirming that the tags were expired, Rubino proceeded to follow Sullivan onto Eisenhower Parkway and initiated a stop. Sullivan turned right at the next intersection and then pulled onto a driveway and stopped.

Rubino approached Sullivan's car and asked her for her license, registration, and proof of insurance, but Sullivan did not proffer a license or registration. Rubino testified that Sullivan initially gave him a misspelled version of her name and omitted her middle name, but eventually provided him with identification that contained her full name. Rubino then checked Sullivan's information and learned that she had warrants for her arrest. While Rubino sat in his car, Sullivan got out of her car and proceeded to put her purse in her trunk. Sullivan then put something in the front of her pants. At this point, Rubino got out of his car and tried to place Sullivan under arrest.

A video from the camera in Rubino's car clearly shows that Sullivan did not cooperate with Rubino's orders to proceed to the rear of her car and place her arms behind her back. Sullivan only reluctantly moved to the rear of her car, while asking Rubino to let her call her mother. Even after moving to the rear of her car, Sullivan danced about, moved her arms in ways that made it difficult for Rubino to place handcuffs on her, and feigned to comply with Rubino's commands. Eventually, Rubino tried to physically force Sullivan to comply. At this point Sullivan began to struggle with Rubino and the struggle proceeded outside the view of the police car's video recorder. Rubino testified that Sullivan struck him in the face and that he tried to spray her with pepper spray, but that it mostly missed Sullivan's face. Rubino also stated that Sullivan scratched his arms. Rubino was eventually able to subdue Sullivan and placed her in the back the police car.

Based on these events, the prosecution charged Sullivan with resisting and obstructing an officer causing an injury requiring medical attention or care in violation of MCL 750.81d(2) and driving with a suspended license in violation of MCL 257.904(1). The jury did not find Sullivan guilty of resisting and obstructing an officer causing an injury requiring treatment, but did find her guilty of the lesser offense of resisting and obstructing an officer. See MCL 750.81d(1). The jury also found Sullivan guilty as charged of driving with a suspended license. This appeal followed.

II. Jurisdiction and Resisting and Obstructing an Officer

A. Standard of Review

Sullivan first argues that the trial court erred when it denied her motion to dismiss the charge of resisting and obstructing an officer. This Court reviews a trial court's decision whether to grant a motion to dismiss charges for an abuse of discretion. *People v Stephen*, 262 Mich App 213, 218; 685 NW2d 309 (2004). A trial court abuses its discretion when it selects an outcome that is outside the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). This issue also involves the proper interpretation of MCL 750.81d, which this Court reviews de novo. *People v Martin*, 271 Mich App 280, 346; 721 NW2d 815 (2006).

B. Analysis

Before the trial court, Sullivan moved for the dismissal of the charge under MCL 750.81d(2) because Rubino purportedly was outside his jurisdiction when he stopped her. The trial court found that Rubino had jurisdiction and denied Sullivan's motion.

MCL 750.81d(2) makes it a felony for an individual to assault, batter, wound, resist, obstruct, oppose, or endanger a “person who the individual knows or has reason to know is performing his or her duties” The word person is defined to include a “police officer of a junior college, college, or university” authorized to enforce state law. MCL 750.81d(7)(b)(ii). In this case, there is no dispute that Rubino was a duly authorized police officer within the meaning of MCL 750.81d(7)(b)(ii). Nevertheless, because MCL 750.81d specifically refers to a person who the individual “knows or has reason to know” is performing his or her duties, Sullivan argues that the officer must actually be performing his or her duties in order for MCL 750.81d to apply. Sullivan further argues that an officer who is outside his or her jurisdiction has no authority to act and, therefore, is necessarily not performing his or her duties within the meaning of MCL 750.81d. For that reason, she concludes, the statute would not apply to an officer who acts outside the boundaries of his or her geographic jurisdiction.

We do not agree that an officer who attempts to make an arrest outside his or her jurisdiction falls outside the protection of MCL 750.81d. Although Sullivan frames her argument in terms of duty, in essence she argues that an individual is privileged to resist an officer when the officer is acting outside his or her geographic jurisdiction—that is, when the officer’s actions are technically unlawful, an individual may actively resist the officer. However, this Court has already held that an individual may not resist an officer even when the officer is attempting to make an illegal arrest. *People v Ventura*, 262 Mich App 370, 377-378; 686 NW2d 748 (2004). As the court in *Ventura* aptly noted, there is nothing within the language of MCL 750.81d that suggests that the statute only applies when the officer is lawfully performing his or her duties. *Id.* at 376. Indeed, the reference to the officer’s performance of duty is clearly framed in terms of what the *resisting individual* knows or has reason to know—not whether the officer is in fact lawfully performing his or her duties. See MCL 750.81d(1) and (2). And we see no distinction between an arrest that was illegal because it was made without a warrant or probable cause and one that was illegal because it was made outside the officer’s jurisdiction; in both cases the officer was still attempting—however imperfectly—to perform his or her duties. To hold otherwise would be to invite the potential for serious harm to the officer, to the individual being arrested, and to society as a whole:

Assaulting, resisting, or obstructing an officer while he is performing his duty must be avoided for the safety of all society, regardless of the legality of the arrest. It is the immediate harm that can be attendant to an arrest when a subject engages in assaultive, resistant, or obstructive behavior that the Legislature seeks to eradicate. Solid mechanisms are in place to guarantee the safety of those arrested and to correct any injustices that may result from an illegal arrest. The statute at issue, MCL 750.81d, now serves as another mechanism to reduce the likelihood and magnitude of the potential dangers inherent in an arrest situation, thereby dually protecting both the general public and its police officers. [*Ventura*, 262 Mich App at 377.]

Further, even if we were to conclude otherwise, Sullivan would still not be entitled to relief. When Rubino first saw Sullivan driving with an expired license plate, she was arguably outside his jurisdiction. However, because the portion of Eisenhower Parkway at issue is a “public right of way traversing or immediately contiguous to” property leased by the university, see MCL 390.1512(1), once Sullivan drove onto Eisenhower Parkway, she was within Rubino’s

jurisdiction. And, because Rubino witnessed Sullivan driving on Eisenhower Parkway with an expired license plate, he could pursue her outside his jurisdiction. MCL 764.2a(1)(c)(iii). Therefore, even if lack of jurisdiction were a defense to MCL 750.81(d), it would not apply to the facts of this case.¹

The trial court did not abuse its discretion when it denied Sullivan's motion to dismiss.

III. Instructional Errors

A. Standard of Review

Sullivan next argues that the trial court deprived her of a fair trial when it failed to properly instruct the jury. This Court reviews de novo claims of instructional error. *Martin*, 271 Mich App at 337. An instructional error will not warrant reversal if, after reviewing the instructions as a whole, this Court concludes that the instructions adequately protected the defendant's rights by fairly presenting the issues to be tried. *Id.* at 337-338.

B. Attempted Resisting and Obstructing an Officer

Sullivan contends that the trial court should have instructed the jury that it could find her guilty of attempting to resist an officer as a lesser included offense of resisting and obstructing an officer causing injury requiring treatment. Attempt offenses are not necessarily included lesser offenses of the offense attempted; they are cognate offenses. See *People v Adams*, 416 Mich 53, 57; 330 NW2d 634 (1982). Nevertheless, if a defendant requests the trial court to instruct the jury on attempt and a rational view of the evidence supports such an instruction, the trial court must instruct the jury on attempt. MCL 768.32(1); *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002) (Taylor, J.) (noting that under MCL 768.32(1) the trial court should instruct the jury on attempt if a rational view of the evidence would support that instruction).

A person who does any act towards the commission of an offense with the intent to commit that offense, but who fails in the perpetration or is prevented from executing the offense, is guilty of the offense of attempt. MCL 750.92. Thus, attempt consists in "(1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense." *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001).

The prosecution alleged and argued that Sullivan resisted an officer causing an injury that required medical treatment or care. To that end, the prosecution presented evidence through testimony and a video that demonstrated that Sullivan refused to comply with officer Rubino's commands and eventually physically resisted his efforts to place her under arrest. Although there was some dispute about what occurred off camera, this evidence tended to show that Sullivan engaged in both noncompliance and physical resistance. Similarly, Sullivan did not

¹ Defendant also suggests that the trial court's interpretation of MCL 764.2a, which relates to police officers' authority, renders that statute unconstitutionally vague. However, defendant provides only a cursory argument for this issue. For that reason, we conclude that defendant has abandoned it on appeal. *Martin*, 271 Mich App at 315.

argue or present evidence that she merely *tried* to resist Rubino. Instead, she argued that she tried to comply with Rubino's commands, albeit slowly, and that he reacted violently. Thus, depending on how one viewed the evidence, it either supported a finding beyond a reasonable doubt that Sullivan completed the offense of resisting and obstructing an officer or it did not; there was no evidence tending to support the view that Sullivan merely intended to resist and obstruct and took some step in furtherance of that intent, but failed or was otherwise prevented from completing the offense. Further, the prosecution presented evidence and testimony demonstrating that Sullivan's actions injured Rubino and that his injuries required medical treatment or care. Sullivan did not dispute this evidence, but rather argued that there was no evidence that she caused the injuries. Consequently, because a rational view of the evidence did not support the requested attempt instruction, the trial court did not err when it declined to give it.

C. Supplemental Instruction

Sullivan also argues that the trial court should have instructed the jury that lying, falsifying information, refusing to cooperate, and objecting to or interfering with the officer does not constitute resisting and obstructing an officer. Defendant relies on *People v Vasquez*, 465 Mich 83; 631 NW2d 711 (2001). However, the Court in *Vasquez* construed MCL 750.479 rather than MCL 750.81d. Further, in *Vasquez*, the defendant merely misrepresented his identity to the police officer by providing a different name. *Id.* at 86. He did not engage in physical resistance.

In this case, Rubino testified that Sullivan initially provided misinformation about her name and engaged in conduct that he believed suggested that she would not comply with his commands, but these early verbal exchanges were not at issue. Indeed, Sullivan's trial counsel acknowledged as much in her opening statement. Instead, the focus of the trial was on the evidence concerning Sullivan's actions after Rubino told her that she was under arrest and ordered her to the back of the car. Hence, even if the requested instruction were applicable to the charged offense, it was not applicable to the facts of this case. The trial court's instructions adequately protected Sullivan's rights by fairly presenting the issues to be tried. *Martin*, 271 Mich App at 337-338.

D. Defense Theory

Finally, Sullivan argues that the trial court erred when it refused to instruct the jury on her theory of the case. Sullivan relies on *People v Wilson*, 122 Mich App 1, 3; 329 NW2d 513 (1982) and *People v Hoskins*, 403 Mich 95, 100; 267 NW2d 417 (1978) for the proposition that a defendant is entitled to have the jury instructed on his or her theory of the case. However, both those cases relied on prior court rules, which mandated such an instruction on a defendant's request. See GCR 1963, 516.7. Although the current court rules permit the parties to a civil case to submit a written summary of their respective theories for submission to the jury, see MCR 2.516(A), Sullivan has not cited any authority for the proposition that a trial court presiding over a criminal matter *must* give a summary of a defendant's theory of the case after an oral request. In any event, even if we were to conclude that the trial court erred in failing to give the requested instruction, any error was harmless. *People v Lukity*, 460 Mich 484, 493-494; 596 NW2d 607 (1999). The trial court allowed Sullivan's trial counsel to argue Sullivan's theory to the jury and her trial counsel did in fact present Sullivan's theory during both opening and closing statements. Thus, the jury was fully apprised of Sullivan's theory and rejected it.

There were no instruction errors warranting relief.

IV. Directed Verdict

A. Standard of Review

Sullivan also contends that the trial court erred when it denied her motion for directed verdict on the charge of driving with a suspended license. “When reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.” *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

B. Analysis

MCL 257.904(1) provides that a “person whose operator’s or chauffeur’s license or registration certificate has been suspended or revoked and who has been notified as provided in section 212 [MCL 257.212] of that suspension or revocation . . . shall not operate a motor vehicle” Because the statute refers to the notification “provided in section 212,” in order to prove the elements of MCL 257.904(1), the prosecutor must prove not only that the defendant received notice that his or her license had been suspended or revoked, but also that the defendant received that notice in the manner provided under MCL 257.212. That is, the prosecution must prove that the defendant received notice “either by personal delivery to the person to be notified or by first-class United States mail addressed to the person at the address shown by the record of the secretary of state.” MCL 257.212.

At trial, there was clear evidence that Sullivan actually knew that her license was suspended. Nevertheless, there was no evidence tending to show how Sullivan knew of the suspension; the prosecution did not present any evidence that Sullivan received notice through personal service or the mail. Thus, even viewing the evidence in a light most favorable to the prosecution, there was no evidence from which a reasonable jury could conclude that Sullivan received the required notice by personal delivery or by first-class United States mail. Consequently, the trial court should have directed a verdict of acquittal on the charge of driving with a suspended license. Therefore, we reverse Sullivan’s conviction for driving on a suspended license, vacate her sentence for that conviction, and remand for entry of a directed verdict of acquittal on that charge.

Affirmed in part, reversed in part, and remanded for entry of a directed verdict of acquittal on the charge of driving with a suspended license. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Michael J. Kelly